

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

COURT - II

CP (IB) 216/NCLT/AHM/2022

[Application for initiation of Corporate Insolvency Resolution Process
under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the Matter of:

Meera Garments

A proprietorship concern

Through its proprietor - Mrs. Anal Mihir Shah

**Applicant/
Operational Creditor**

Versus

Tribesmen Graphics Private Limited

**Respondent/
Corporate Debtor**

Order Pronounced on: 23/01/2023

Coram:

DR. DEEPTI MUKESH

MEMBER(JUDICIAL)

AJAI DAS MEHROTRA

MEMBER (TECHNICAL)

MEMO OF PARTIES

M/s. Meera Garments

A proprietorship concern –

Through its proprietor – Mrs. Anal Mihir Shah

Having office at:

2/22C, Selvalakshmi Nagar

Chettipalayam P.O.

Angeripalayam Road

Tirupur 641 603

Tamil Nadu

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Applicant/Operational Creditor

Versus

Tribesmen Graphics Private Limited

B-602, 6th Floor

ATMA House

Opp. Old RBI

Ashram Road

Ahmedabad 380 009

Gujarat State

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Respondent/Corporate Debtor

Appearance:

For Applicant : Ms. Noopur Dalal, Advocate

For the Respondent : Mr. Kunal Vaishnav, Advocate

ORDER

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mrs. Anal Mihir Shah, proprietor of **M/s. Meera Garments** (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency Process (CIRP) against **Tribesmen Graphics Private Limited** (for brevity 'Corporate Debtor').
2. The applicant is a proprietorship concern of Mrs. Anal Mihir Shah having its office at 2/22C, Selvalakshmi Nagar, Chettipalayam P.O., Angeripalayam Road, Tirupur 641 603, Tamil Nadu, engaged in the business of readymade raw material required for garments manufacturing.
3. The corporate debtor is a private limited company, incorporated on 17.02.2012 under the provisions of Companies Act, 1956 duly registered with Registrar of Companies, Ahmedabad, Gujarat State with CIN: U93000GJ2012PTC069084, having registered office at B-602, 6th Floor, ATMA House, Opp. Old RBI, Ahmedabad 380 009,

Gujarat. The authorised share capital of the corporate debtor is Rs. 50,00,000/- and paid up share capital of the company is Rs. 28,12,500/-. The corporate debtor is engaged in the business of textiles.

4. It is submitted by the applicant that a total sum of Rs. 1,95,13,046/- (Rupees one crore ninety-five lacs thirteen thousand forty-six only) which includes interest at the rate of 18% per annum for 46 months on principal outstanding amount of Rs. 1,15,46,181/- is due and payable by the corporate debtor towards the goods supplied during the period from 16.11.2017 to 24.12.2018. As per the bank statement submitted by the applicant the last payment was made by the corporate debtor on 04.06.2021. As per part IV, Form 5 of the application, date of default is 08.01.2019.
5. On not receiving the payment of the long outstanding, the applicant issued demand notice in form 3 dated 08.02.2022 under Section 8 of the Insolvency and Bankruptcy Code, 2016. Applicant has produced a copy of track report evidencing delivery of the said notice as per the address in master data of the corporate debtor.

6. Thereafter, the applicant filed application under Section 9 of the Insolvency & Bankruptcy Code, 2016 on 24.06.2022.
7. The corporate debtor filed affidavit in reply inter alia stating that:
 - There is a pre-existing dispute between the applicant and corporate debtor prior to issuance of the statutory notice which was informed to the applicant vide email dated 17.03.2022.
 - There is an amount due and payable by the corporate debtor to the applicant subject to the conditions mentioned in reply dated 24.12.2021.
 - Though the liquidity of the corporate debtor has eroded due to prevailing market and COVID situation, it was submitted that corporate debtor was willing to make payment in 12 equal quarterly instalments commencing from January, 2024.
 - Respondent is a running company, however, due to temporary liquidity issues the payment could not be made to the applicant.
8. The applicants filed rejoinder inter alia stating that:
 - The terms of payment/settlement proposed by the corporate debtor in its reply are not acceptable to the applicant.

9. As per part IV, Form 5 total amount of debt payable by the corporate debtor is Rs. 1,95,13,046/- (Rupees one crore ninety-five lacs thirteen thousand forty-six only) which include interest at the rate of 18% per annum for 46 months on principal outstanding amount of Rs. 1,15,46,181/-.
10. The applicant is maintaining a running account with the corporate debtor and as per the bank statement produced by the applicant, last payment was received on 04.06.2021 though date of default as mentioned in Form 5, Part IV is 08.01.2019. Therefore, the application filed on 22.06.2022 is within limitation and not barred by law.
11. Registered office of the corporate debtor is situated in Ahmedabad, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.
12. In compliance of Section 9 (3) (b) of the IB Code the applicant has filed affidavit to the effect.

13. Heard submissions and perused the documents on record. The corporate debtor has not brought on record any document in support of its defence that there is a pre-existing dispute prior to issuance of demand notice dated 08.02.2022. No reply to demand notice under section 8 was given by the corporate debtor. Moreover, in its reply dated 09.10.2022 to the application, the corporate debtor has categorically admitted that an amount is due and payable by the corporate debtor subject to the conditions mentioned in the reply dated 24.12.2021, copy of which has not been brought on record by the corporate debtor, but on the other side has admitted debt payable and default existing and continuing. Thus, we are left with no alternative but to admit the application. Accordingly, the present application is admitted, in terms of section 9 (5) of IBC, 2016.
14. The applicant has not proposed the name of the Interim Resolution Professional (IRP) to be appointed. We, hereby appoint Mr. Darshan Bharatbhai Patel, 31, Vrindavan, Nr. Akshar Flat, Inquilab society, Gulbai tekra, Polytechnic, Ahmedabad 380 015 with registration No. IBBI/IPA-001/IP-P-01579/2018-19/12442 and having email ID ca.darshanbpatel@gmail.com subject to the condition that no disciplinary proceedings are pending against him. Specific consent of

the IRP in Form 2, along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to be filed within a period of one week from the date of this order.

15. We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Darshan Bharatbhai Patel to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1)

of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

17. A copy of the order shall be communicated to the applicant, IRP and the corporate debtor. In addition, a copy of the order shall also be forwarded to IBBI for its records and for taking steps for updating the Master Data of the corporate debtor in MCA portal. IBBI shall send a compliance report to the Registrar, NCLT.

Sd/-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

Sd/-

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)**

Nair/Mansi,LRA